

Citation	Condition or Requirement
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7. Maintenance standards for community spouses and other dependent family members used to calculate monthly income allowances under Section 1924 of the Act

a. Community spouses

- ☐ 1. A standard based on the formula contained in Section 1924(d) is used.
- ☒ 2. The maximum standard contained in Section 1924(d)(3)(C).
- ☐ 3. A fixed standard which is greater than the minimum standard described in Section 1924(d) plus actual shelter costs not to exceed the maximum standard contained in Section 1924(d)(3)(C). The standard used is \$\_\_\_\_\_.

b. Other family members who are dependent

- ☒ 1. A standard based on the formula contained in Section 1924(d)(1)(C) is used.
- ☐ 2. A fixed standard greater than the amount which would be used if the formula described in Section 1924(d)(1)(C) were used. The standard used is \$\_\_\_\_\_.

- ☒ c. The standards described above are used for individuals receiving home and community-based waiver services in lieu of services provided in a medical or remedial care institution.

d. Definition of dependency

The definition of dependency below is used to define dependent children, parents and siblings for purposes of deducting allowances under Section 1924.

"Family members" only includes minor or dependent children, dependent parents of either the institutionalized individual or the community spouse or dependent siblings of either the institutionalized individual or the community spouse who are residing with the community spouse who may be claimed by either spouse for tax purposes under the Internal Revenue Code.

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WEST VIRGINIA  
DEPARTMENT OF WELFARE

78-11

MEMORANDUM

RE: October 26, 1978

Commissioner Leon H. Ginsberg

DM: Richard L. Withers, Legal Counsel 

SUBJECT: Powers of the Commissioner to Delegate Authority

I have been asked by the HEW regional counsel to render an opinion concerning the power of the Commissioner of the West Virginia Department of Welfare to delegate authority.

As you are aware, the authority and powers of the Commissioner of the Department of Welfare are described at Code Section 9-2-6. In particular, § 9-2-6(16) provides as follows:

(The Commissioner is authorized and empowered to) 'Delegate to the personnel of the Department all powers and duties vested in the Commissioner, except the power and authority to sign contracts and agreements, but the Commissioner shall remain responsible therefor.'

Upon reviewing the language in this Section of the West Virginia Code, it is my opinion that a delegation of authority to any single state agency or subdivision of the West Virginia Department of Welfare can only be withdrawn and/or superseded by an equivalent act dissolving such delegation.

The phrase "but the Commissioner shall remain responsible therefor" could apply to either of the preceding clauses; i.e., the phrase "to delegate. . . all powers and duties vested in the Commissioner" or the phrase "the power and authority to sign contracts and agreements." Some confusion exists because of these two possible interpretations.

If the phrase refers to the Commissioner's responsibility for contracts and agreements, there is no need to further analyze the nature of delegation under this subsection. The peculiar phrasing (the second comma) and the apparent redundancy of such an interpretation, though, require consideration of the alternative action which would read as follows:

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'The Commissioner is authorized and empowered to delegate to the personnel of the Department all powers and duties vested in the Commissioner, but the Commissioner shall remain responsible therefor.'

This reading draws into question the very nature of delegation; specifically, it raises the question of the scope of "responsibility" retained by the Commissioner for decisions made by the staff of the Department or any subdivision thereof once authority has been delegated.

Any form of administration requiring the Commissioner to make all decisions would, of course, be unworkable. Without § 9-2-6(16), however, the Commissioner could still direct that staff members or employees of the agency make decisions which the Commissioner would remain solely responsible for as though he had made the decision himself. The Legislature's grant of authority to delegate must mean more than "you make the decision and I'll take the credit or blame."

The term "delegation" as defined at common law according to Black's Law Dictionary means:

"The transfer of authority by one person to another; the act of making or commissioning a delegate." (emphasis added)

The Office of Commissioner, itself, is the result of a legislative 'delegation' or transfer of authority and responsibility. This act of delegation from one body to another cannot be rescinded or modified without a similar act occurring; i.e., new legislation passed and signed into law. Logic dictates the conclusion that, once a delegation of authority has been made by the Commissioner, such can only be rescinded or modified through a similar act. Once authority has been transferred, the Commissioner may not arbitrarily pick and choose the circumstances or decisions which he will retain authority over. The Commissioner may act to 'transfer' such authority back to himself, however. The execution of such transfer must be substantially equivalent to the original act of delegation.

The question still remains as to the intent of the Legislature in using the phrase "but the Commissioner shall be responsible therefor" especially if the phrase does not apply to the signing of contracts and agreements. In my opinion, and based upon discussions with legislators, the type of

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responsibility contemplated here (whether or not in reference to delegated authority or the signing of contracts) is primarily based upon the Commissioner's financial responsibility as evidenced by § 9-2-2 of the West Virginia Code. In this Section the Legislature has expressed its concern that the Commissioner be responsible "for the faithful performance of his duties." Besides prescribing the oath of office, the Legislature has required the posting of a performance bond in the amount of \$15,000.00 to be filed with the Secretary of State's office. The Legislature has therefore defined the responsibilities of the Commissioner to be:

- a) to support the Constitution of the United States and West Virginia; and
- b) to faithfully discharge the duties of his office to the best of his skill and judgment. (W.Va. Const., Art. IV, Sec. 5).

No other employees of the agency are required to execute a performance bond. The type of responsibility referred to in § 9-2-6(16) is, therefore, also a fiscal responsibility which is personal to the Commissioner to insure the faithful performance of his duties. It is not a responsibility for individual decisions. The provisions of § 9-2-4 of the Code are also persuasive on this point. This Section requires the Commissioner to appoint and employ such deputies, assistants and others as in his judgment are necessary (or desirable) to carry out fully and in an orderly, efficient and economical manner the powers, duties and responsibilities of the Department and of his office.

The power to delegate authority as found in § 9-2-6(16) must therefore be read as a corollary to the duty to appoint personnel as found in § 9-2-4 and not as mere repetition of it.

Based upon the foregoing, it is my opinion that, once authority has been delegated by the Commissioner to the personnel of the Department of Welfare, individual decisions of the delegatee cannot be overridden by the Commissioner without a transfer back to the Commissioner of the authority which had been delegated. This transfer must be accomplished by an act substantially equivalent to the act of delegation; e.g., where delegation is accomplished by execution of a written instrument, it can be rescinded by the execution of a written instrument.

If you have any questions, please let me know.

RLW/cs

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: West Virginia

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Citation(s)	Condition or Requirement
<u>A. General Conditions of Eligibility</u>	
Each individual covered under the plan:	
42 CFR Part 435, Subpart G	1. Is financially eligible (using the methods and standards described in Parts B and C of this Attachment) to receive services.
42 CFR Part 435, Subpart F	2. Meets the applicable non-financial eligibility conditions.
	a. For the categorically needy:
	(i) Except as specified under items A.2.a.(ii) and (iii) below, for AFDC-related individuals, meets the non-financial eligibility conditions of the AFDC program.
	(ii) For SSI-related individuals, meets the non-financial criteria of the SSI program or more restrictive SSI-related categorically needy criteria.
1902(l) of the Act	(iii) For financially eligible pregnant women, infants or children covered under sections 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX) of the Act, meets the non-financial criteria of section 1902(l) of the Act.
1902(m) of the Act	(iv) For financially eligible aged and disabled individuals covered under section 1902(a)(10)(A)(ii)(X) of the Act, meets the non-financial criteria of section 1902(m) of the Act.

State: West Virginia

Citation	Condition or Requirement
	b. For the medically needy, meets the non-financial eligibility Conditions of 42 CFR Part 435.
1905(p) of the Act	c. For financially eligible qualified Medicare beneficiaries Covered under section 1902(a)(10)(E)(I) of the Act, meets the non-financial criteria of section 1905(s).
42 CFR 435.402	3. Is residing in the United States and-- a. Is a citizen;
P.L. 104-193	b. Is an alien lawfully admitted for permanent residence and living in the United States prior to August 22, 1996, to whom 40 qualifying quarters of Social Security Coverage can be credited and who otherwise meets Medicaid eligibility criteria. c. Is a refugee (§207 of INA) and living in the United States prior to August 22, 1996 and who otherwise meets Medicaid eligibility criteria. Coverage will remain in effect until 5 years after the date of the alien's entry into the United States. d. Is an asylee (§208 of INA) and living in the United States prior to August 22, 1996 and who otherwise meets Medicaid eligibility criteria. Coverage will remain in effect until 5 years after the grant of asylum. e. Is an alien and living in the United States prior to August 22, 1996, who has had deportation withheld under §243(h) of the INA and who otherwise meets Medicaid eligibility criteria. Coverage will remain in effect for 5 years after the grant of withholding. f. Is an honorably discharged veteran and an alien or an alien on active duty in the United States armed forces and the spouse or unmarried dependent child(ren) of such individuals who were living in the United States prior to August 22, 1996. g. Is a refugee (§207 of INA) entering the United States on or after August 22, 1996 and who otherwise meets Medicaid eligibility criteria. Coverage will be in effect for 5 years from the date of entry.

TN No. 97-07

Supersedes

TN No. NEW

Date Approved JUN 24 1997 Effective Date 1/1/97

State: West Virginia

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Citation	Condition or Requirement
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| h. | Is an asylee (§208 of INA) and entering the United States on or after August 22, 1996 and who otherwise meets Medicaid eligibility criteria. Coverage will be in effect for 5 years from the date of entry.   |
| i. | Is an alien entering the United States on or after August 22, 1996 who has had deportation withheld under §243(h) of the INA and who otherwise meets Medicaid eligibility criteria. Coverage will be in effect for 5 years from the grant of withholding.   |
| j. | Is an honorably discharged veteran and an alien or an alien on active duty in the United States armed forces and the spouse or unmarried dependent child(ren) of such individuals who were living in the United States on or after August 22, 1996 and who otherwise meets Medicaid eligibility criteria.   |
| k. | Is an alien who is a lawful permanent resident, who can be credited with 40 qualifying quarters of Social Security coverage, who entered the United States on or after August 22, 1996, and who otherwise meets Medicaid eligibility criteria, shall become eligible 5 years from the date of lawful permanent residence. Such qualified aliens who otherwise meet Medicaid eligibility criteria will be eligible to receive emergency services only during this 5 year period. |
| l. | Is an alien who is a lawful permanent resident living in the United States prior to August 22, 1996 who otherwise meets Medicaid eligibility criteria.  |
| m. | Is an alien who has had deportation withheld under §243(h) of the Immigration and Nationality Act (INA), an alien granted parole for at least 1 year by the INS (§21(d)(5) of INA, an alien granted conditional entry under §203(a)(7) of immigration law in effect before April 1, 1980, or a battered immigrant, who meets certain requirements.  |

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State: West Virginia

Citation

Condition or Requirement

42 CFR 435.403  
1902(b) of the  
Act

- d. Is an alien granted lawful temporary resident status under section 210 of the Immigration and Nationality Act not within the scope of c. above (coverage must be restricted to certain emergency services during the five-year period beginning on the date the alien was granted such status); or
- e. Is an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (coverage must be restricted to certain emergency services).
4. Is a resident of the State, regardless of whether or not the individual maintains the residence permanently or maintains it at a fixed address.

☐ State has interstate residency agreement with the following States:

☐ State has open agreement(s).

☒ Not applicable; no residency requirement.

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JUN 30 1995

HCFA ID: 7985E



State/Territory: West Virginia

Citation	Condition or Requirement
42 CFR 435.1008	5. a. Is not an inmate of a public institution. Public institutions do not include medical institutions, intermediate care facilities, or publicly operated community residences that serve no more than 16 residents, or certain child care institutions.
42 CFR 435.1008 1905(a) of the Act	b. Is not a patient under age 65 in an institution for mental diseases except as an inpatient under age 22 receiving active treatment in an accredited psychiatric facility or program.  <input checked="" type="checkbox"/> Not applicable with respect to individuals under age 22 in psychiatric facilities or programs. Such services are not provided under the plan.
42 CFR 433.145 1912 of the Act	6. Is required, as a condition of eligibility, to assign his or her own rights, or the rights of any other person who is eligible for Medicaid and on whose behalf the individual has legal authority to execute an assignment, to medical support and payments for medical care from any third party. (Medical support is defined as support specified as being for medical care by a court or administrative order.)

TN No. 93-12

Supersedes

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**FEB 14 1994**

Effective Date

**3 21 1993**

TN No. 87-2

HCFA ID: 7985E

State/Territory: West Virginia

Citation	Condition or Requirement
	<p>An applicant or recipient must also cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself or herself and any other person who is eligible for Medicaid and on whose behalf the individual can make an assignment; except that individuals described in §1902(1)(1)(A) of the Social Security Act (pregnant women and women in the post-partum period) are exempt from these requirements involving paternity and obtaining support. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.</p> <p>An applicant or recipient must also cooperate in identifying any third party who may be liable to pay for care that is covered under the State plan and providing information to assist in pursuing these third parties. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.</p> <p><u>/y</u> Assignment of rights is automatic because of State law; WV Code, Chapter 9, 9-3-4 and 9-5-11.</p>
42 CFR 435.910	7. Is required, as a condition of eligibility, to furnish his/her social security account number (or numbers, if he/she has more than one number).

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